IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6146 of 1986

Date of decision: 16-2-98

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

PARSHOTTAMDAS REVANDAS & SONS

Versus

UNION OF INDIA

Appearance:

None present for Petitioner

None present for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/02/98

ORAL JUDGEMENT

The petitioner, by this petition, has challenged the order cum demand of freight duty dated 8th November, 1986 made by the respondent Railway Administration. As

per the practise followed earlier, for the convenience of the parties, coal allotted to the parties by the coalieries used to be loaded in wagons and allowed to move. Railway Receipts were usually prepared thereafter. It happened many times that before RR was received the wagon reached the destination and the party concerned asked for delivery on the basis of the label. In order to avoid inconvenience and to save the parties from demurrage delivery was given on making lump sum payment. Some times delivery was also granted on producing bank guarantee, if there was no label. When the RR is produced later on, difference in the freight, if any, is collected. In order to ensure that the delivery is not delayed, without insisting for RR delivery is made.

2. From the reply to the special civil application it comes out that in a wagon of the capacity of 55 tons it was found that it had carried 69 tons, and as such the consignee had to pay difference of freight for the excess weight. Under the impugned order the respondents demanded charge for the excess weight of coal from the petitioner, and it has been mentioned therein that in case the freight charge is not paid then the facility which is provided by label delivery will be discontinued in future. The petitioner has challenged this order before this Court.

3. I fail to see how this order of the respondent can be said to be illegal or arbitrary or perverse. It is a case where the petitioner carried more coal than the capacity of the wagon, but still wanted to pay the freight only as per the label, which cannot be permitted . The petitioner is under legal obligation to pay the freight charges to the respondents for the weight which was carried by them in the wagon. To facilitate quick delivery as well as to avoid demurrage charges label delivery facility is in vogue. But, in case the parties are not cooperating with the Railway Administration and are refusing to make payment of freight for the excess weight carried, certainly the respondents are within their competence to discontinue the facility of label delivery. Exactly what happened in the present case is that in the RR it was found that the weight carried in the wagon was more than the label weight, and as such the respondents have raised demand of freight for the excess weight. Instead of paying that amount the petitioner has challenged the demand as well as the order passed to discontinue label delivery facility to the petitioner. I fail to see how this order would cause any prejudice to the petitioner. On the contrary, in case this order is set aside the respondents would be under obligation to

continue to provide the petitioner label delivery facility, which will put the respondents to loss. Not only that, but it will cause prejudice to the respondents. Taking into consideration the totality of the facts of this case I do not find any merits in this special civil application.

4. In the result this special civil application fails and the same is dismissed. Rule discharged. Interim relief granted earlier stands vacated. No order as to costs.

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csm